

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LAS VEGAS METROPOLITAN POLICE)
DEPARTMENT HEALTH AND WELFARE)
TRUST,)

Plaintiff,

2:11-cv-00734-RCJ-PAL

vs.

P&P INSURANCE SERVICES, LLC et al.,

Defendants.

ORDER

This case arises out of an alleged kickback scheme in violation of a consulting agreement. Pending before the Court is a motion to dismiss the Complaint, a motion to dismiss the Cross-claim, and a motion to dismiss the Third-party Complaint. For the reasons given herein, the Court denies the motions.

I. FACTS AND PROCEDURAL HISTORY

On or about January 1, 2002, the Las Vegas Metropolitan Police Department Health & Welfare Trust (the "Trust") entered into a Consulting Services Agreement (the "P&P Agreement") with P&P Insurance Services, LLC ("P&P"), under which P&P was to provide healthcare consulting services to the Trust at the rate of \$2 per employee per month, and subject to a provision that P&P and its agents could not receive anything of value from any other current or contemplated service provider of the Trust as consideration for the Trust doing business with

1 the other provider or for P&P recommending the other provider to the Trust. (*See* Compl.
2 ¶¶ 13–16, May 9, 2011, ECF No. 1 (quoting P&P Agreement ¶ 5(c)). The Trust also entered into
3 a contract with Tru Services, LLC (the “Tru Services Contract”) to provide stop loss coverage
4 for the Trust and its employees from 2002–2010. (*Id.* ¶ 18). The Trust alleges that Tru Services
5 was aware of the P&P Agreement, as P&P and one of its principals, Tom Pomeroy, brokered the
6 Tru Services Agreement. (*See id.* ¶¶ 3, 17–19).

7 Since 2002, Tru Services has been paying between \$1.55 and \$3.56 per employee per
8 month to an entity called GIS, LLC—an entity which is not registered with either Nevada’s or
9 Arizona’s secretaries of state, the only available contact information for which is a post office
10 box in Phoenix, Arizona, and which the Trust believes is a fictional entity used by P&P and
11 Pomeroy for the sole and express purpose of defrauding the Trust, as explained herein. (*See id.*
12 ¶¶ 20, 28–30). Specifically, Tru Services charged the Trust more for stop loss insurance under
13 the Tru Services Contract in order to provide for the transfers it made to GIS, with overcharges
14 totaling \$1,072,372.52 from 2002 through 2009. (*See id.* ¶¶ 22–23). Pomeroy and P&P received
15 some portion of the transfers from Tru Services to GIS, which violated ¶ 5(c) of the P&P
16 Agreement because it was consideration to P&P (or its agents) for brokering the Trust’s contract
17 with Tru Services. (*Id.* ¶ 24). When the Trust began to inquire of P&P’s competitors in 2010,
18 P&P or Pomeroy forged a renewal to the P&P Agreement to frustrate the ability of the Trust to
19 obtain a new stop loss insurer, in furtherance of the scheme. (*See id.* ¶¶ 25–26). Defendants have
20 also intentionally concealed their true identities and relationships. (*Id.* ¶ 27).

21 The Trust sued P&P, Pomeroy, Tru Services, GIS, and two alleged principals of GIS,
22 Michael Johnson and Peter Ranke, in this Court on six causes of action: breach of contract and
23 the implied covenant of good faith and fair dealing (P&P and Pomeroy); and fraud, civil
24 conspiracy, racketeering under Nevada law, and unjust enrichment (all Defendants). In its
25 Answer, Tru Services brought a Cross-claim for equitable indemnity against P&P, Pomeroy, and

1 GIS, and a Third-party Complaint (“TPC”) for equitable indemnity against an Arizona limited
 2 liability company called Governmental Insurance Services, LLC.¹

3 Tru Services distinguishes Governmental Insurance Services from GIS, which it
 4 characterizes as “a[n unlicensed] limited liability company in Arizona doing business in Clark
 5 County, Nevada.” (See Answer, Cross-cl., & Third-party Compl. 9:18, July 27, 2011, ECF No.
 6 20). Tru Services also alleges that Pomeroy is not only a principal of P&P, but also a principal
 7 of both GIS and Governmental Insurance Services. (See *id.* 9:22–24). Tru Services refers to a
 8 letter it received from Pomeroy on or about March 7, 2007—approximately a month after
 9 Governmental Insurance Services’s incorporation in Arizona—indicating that Tru Services
 10 should pay all of Pomeroy’s commissions to his new company, Governmental Insurance
 11 Services. (See *id.* 12:1–3). Tru Services confirms that P&P and Pomeroy brokered the Tru
 12 Services Contract between itself and the Trust and signed annual renewals as broker through
 13 2010. (See *id.* 10:8–11:9). Tru Services notes that the Trust’s application for its stop loss policy,
 14 i.e., the Tru Services Contract, explicitly disclosed that Pomeroy was to receive a 15%
 15 commission for brokering the policy, and that each annual renewal thereof through 2010
 16 included the same disclosure, (*see id.* 11:10–12:30), implying that the Trust waived the
 17 restriction in the P&P Agreement by assenting to this provision of the Tru Services Agreement.
 18 In any case, Tru Services denies any knowledge of the P&P Agreement and alleges it relied on
 19 the representations of Pomeroy, the Trust’s broker. (See *id.* 12:14–18).

20 P&P and Pomeroy have moved to dismiss the Complaint for lack of personal jurisdiction,
 21 and they have also moved to dismiss the Cross-claim for both lack of personal jurisdiction and
 22

23 ¹GIS, LLC is not listed with either the Nevada Secretary of State or the Arizona
 24 Corporation Commission, but Governmental Insurance Services, L.L.C. is listed as a domestic
 25 LLC in good standing with the Arizona Corporation Commission, having as a sole manager and
 member a Ms. Rachel Prystie who resides in Arizona. The company was incorporated on
 February 12, 2007.

1 failure to state a claim. Governmental Insurance Services has moved to dismiss the TPC for both
 2 lack of personal jurisdiction and failure to state a claim.

3 II. LEGAL STANDARDS

4 A. Personal Jurisdiction

5 A defendant may move to dismiss for lack of personal jurisdiction. *See Fed. R. Civ. P.*
 6 12(b)(2). Jurisdiction exists if: (1) provided for by law; and (2) the exercise of jurisdiction
 7 comports with due process. *See Greenspun v. Del E. Webb Corp.*, 634 F.2d 1204, 1207 (9th Cir.
 8 1980). When no federal statute governs personal jurisdiction, a federal court applies the law of
 9 the forum state. *See Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008). Where a forum
 10 state's long-arm statute provides its courts jurisdiction to the fullest extent of the Due Process
 11 Clause of the Fourteenth Amendment, such as Nevada's does, *see Arbella Mut. Ins. Co. v. Eighth*
 12 *Judicial Dist. Court*, 134 P.3d 710, 712 (Nev. 2006) (citing Nev. Rev. Stat. § 14.065), a court
 13 need only apply federal due process standards, *see Boschetto*, 539 F.3d at 1015.²

14 There are two categories of personal jurisdiction: general jurisdiction and specific
 15 jurisdiction. General jurisdiction exists over a defendant who has "substantial" or "continuous

17 ²Nevada's long-arm rule restricts extra-territorial jurisdiction to the limits of both the
 18 U.S. and Nevada Constitutions. *See Nev. Rev. Stat. § 14.065(1)*. Nevada's Due Process Clause
 19 is textually identical to the federal clause in relevant respects, *see Nev. Const. art. 1, § 8(5)*, and
 20 the Nevada Supreme Court reads the state clause as coextensive with the federal clause, *see, e.g.*,
Wyman v. State, 217 P.3d 572, 578 (Nev. 2009). Until 1868, when the Fourteenth Amendment
 21 was adopted, the Due Process Clause of the Fifth Amendment did not apply to the states. *See*
Barron v. City of Baltimore, 32 U.S. 243, 250–51 (1833). The Declaration of Rights that
 22 comprises Article I of the Nevada Constitution was included in order to impose certain
 23 restrictions on the State of Nevada that were already imposed against the federal government
 24 under the Bill of Rights, and the Nevada Supreme Court has not interpreted the protections of the
 25 Declaration of Rights to exceed the scope of their federal counterparts. Michael W. Bowers, *The Sagebrush State* 43–44 (3rd ed., Univ. Nev. Press 2006); Michael W. Bowers, *The Nevada State Constitution* 24 (1993). During the Nevada Constitutional Convention in 1864, the Due Process Clause of Article I was not debated, although several other provisions of Article I, and even Section 8, were heavily debated. *See generally* Andrew J. Marsh, *Official Report of the Debates and Proceedings of the Constitutional Convention of the State of Nevada* (Frank Eastman pr., 1866), available at <http://books.google.com>.

1 and systematic” contacts with the forum state such that the assertion of personal jurisdiction over
 2 him is constitutionally fair even where the claims are unrelated to those contacts. *See Tuazon v.*
 3 *R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1171 (9th Cir. 2006) (citing *Helicopteros Nacionales*
 4 *de Colombia, S.A. v. Hall*, 466 U.S. 408, 415 (1984)).

5 Even where there is no general jurisdiction over a defendant, specific jurisdiction exists
 6 when there are sufficient minimal contacts with the forum state such that the assertion of
 7 personal jurisdiction “does not offend ‘traditional notions of fair play and substantial justice.’”
 8 *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316
 9 (1945) (quoting *Milliken*, 311 U.S. at 463). The standard has been restated using different
 10 verbiage. *See Hanson v. Denckla*, 357 U.S. 235, 253 (1958) (“[I]t is essential in each case that
 11 there be some act by which the defendant purposefully avails itself of the privilege of conducting
 12 activities within the forum State, thus invoking the benefits and protections of its laws.” (citing
 13 *Int'l Shoe Co.*, 326 U.S. at 319)); *World-wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297
 14 (1980) (“[T]he foreseeability that is critical to due process analysis is not the mere likelihood
 15 that a product will find its way into the forum State. Rather, it is that the defendant's conduct
 16 and connection with the forum State are such that he should reasonably anticipate being haled
 17 into court there.” (citing *Kulko v. Superior Court of Cal.*, 436 U.S. 84, 97–98 (1978))). From
 18 these cases and others, the Ninth Circuit has developed a three-part test for specific jurisdiction:

- 19 (1) The non-resident defendant must purposefully direct his activities or consummate
 20 some transaction with the forum or resident thereof; or perform some act by which
 21 he purposefully avails himself of the privilege of conducting activities in the forum,
 22 thereby invoking the benefits and protections of its laws;
- 23 (2) the claim must be one which arises out of or relates to the defendant's
 24 forum-related activities; and
- 25 (3) the exercise of jurisdiction must comport with fair play and substantial justice,
 i.e. it must be reasonable.

Boschetto, 539 F.3d at 1016 (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797,

1 802 (9th Cir. 2004)).

2 The plaintiff bears the burden on the first two prongs. If the plaintiff establishes both
 3 prongs one and two, the defendant must come forward with a “compelling case” that
 4 the exercise of jurisdiction would not be reasonable. But if the plaintiff fails at the
 5 first step, the jurisdictional inquiry ends and the case must be dismissed.

6 *Id.* (citations omitted). The “purposeful direction” option of the first prong uses the “*Calder-*
 7 effects” test, under which “the defendant allegedly must have (1) committed an intentional act,
 8 (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be
 9 suffered in the forum state.” *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1128
 10 (9th Cir. 2010) (quoting *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433
 11 F.3d 1199, 1206 (9th Cir. 2006) (en banc)). The third prong of the specific jurisdiction test is
 12 itself a seven-factor balancing test, under which a court considers:

13 (1) the extent of the defendant’s purposeful interjection into the forum state’s affairs;
 14 (2) the burden on the defendant of defending in the forum; (3) the extent of conflict
 15 with the sovereignty of the defendants’ state; (4) the forum state’s interest in
 16 adjudicating the dispute; (5) the most efficient judicial resolution of the controversy;
 17 (6) the importance of the forum to the plaintiff’s interest in convenient and effective
 18 relief; and (7) the existence of an alternative forum.

19 *Menken v. Emm*, 503 F.3d 1050, 1060 (9th Cir. 2007) (quoting *CE Distrib., LLC v. New Sensor*
 20 *Corp.*, 380 F.3d 107, 1112 (9th Cir. 2004)).

21 B. Failure to State a Claim

22 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the
 23 claim showing that the pleader is entitled to relief” in order to “give the defendant fair notice of
 24 what the . . . claim is and the grounds upon which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47
 25 (1957). Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action
 1 that fails to state a claim upon which relief can be granted. A motion to dismiss under Rule
 2 12(b)(6) tests the complaint’s sufficiency. *See N. Star Int’l v. Ariz. Corp. Comm’n*, 720
 3 F.2d 578, 581 (9th Cir. 1983). When considering a motion to dismiss under Rule 12(b)(6) for
 4 failure to state a claim, dismissal is appropriate only when the complaint does not give the
 5

1 defendant fair notice of a legally cognizable claim and the grounds on which it rests. *See Bell*
2 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the complaint is
3 sufficient to state a claim, the court will take all material allegations as true and construe them in
4 the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th
5 Cir. 1986). The court, however, is not required to accept as true allegations that are merely
6 conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden*
7 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action
8 with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a violation
9 is plausible, not just possible. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Twombly*,
10 550 U.S. at 555).

11 “Generally, a district court may not consider any material beyond the pleadings in ruling
12 on a Rule 12(b)(6) motion. However, material which is properly submitted as part of the
13 complaint may be considered on a motion to dismiss.” *Hal Roach Studios, Inc. v. Richard Feiner*
14 & Co.

15 , 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citation omitted). Similarly, “documents
16 whose contents are alleged in a complaint and whose authenticity no party questions, but which
17 are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6)
18 motion to dismiss” without converting the motion to dismiss into a motion for summary
19 judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994). Moreover, under Federal Rule
20 of Evidence 201, a court may take judicial notice of “matters of public record.” *Mack v. S. Bay*
21 *Beer Distrib., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if the district court
22 considers materials outside of the pleadings, the motion to dismiss is converted into a motion for
23 summary judgment. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th
24 Cir. 2001).

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1 **III. ANALYSIS**

2 **A. Personal Jurisdiction**

3 “Where, as here, the defendant’s motion is based on written materials rather than an
 4 evidentiary hearing, the plaintiff need only make a *prima facie* showing of jurisdictional facts to
 5 withstand the motion to dismiss. The plaintiff cannot ‘simply rest on the bare allegations of its
 6 complaint,’ but uncontested allegations in the complaint must be taken as true. ‘[W]e may
 7 not assume the truth of allegations in a pleading which are contradicted by affidavit,’ but we
 8 resolve factual disputes in the plaintiff’s favor.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647
 9 F.3d 1218, 1223 (9th Cir. 2011) (citations omitted).

10 **1. Personal Jurisdiction over P&P and Pomeroy in Nevada**

11 The Trust alleges that P&P is an Arizona limited liability company and that Pomeroy is
 12 an Arizona resident, and that they both “do[] business in Clark County, Nevada.” (*See* Compl.
 13 ¶¶ 2–3). If P&P and Pomeroy have not contradicted the allegation that they do business in
 14 Nevada by affidavit or other admissible evidence, the allegation is sufficient to withstand a
 15 motion to dismiss for lack of personal jurisdiction. First, P&P and Pomeroy’s motion is not
 16 verified, so the claims made therein are not themselves evidence. Second, the exhibits attached
 17 to the motion are: (1) the P&P Agreement; (2) the Summons (served on Pomeroy) and
 18 Complaint; and (3) Pomeroy’s affidavit. If Pomeroy’s affidavit indicates that there is no
 19 personal jurisdiction over P&P or Pomeroy in Nevada, then Plaintiff must respond with contrary
 20 evidence to avoid dismissal, because the Complaint itself is not verified, and hence does not
 21 itself constitute contrary evidence.

22 Pomeroy attests that he is an Arizona resident who has visited Nevada several times on
 23 vacation, but that he has never resided in Nevada and has no bank accounts, investments, or real
 24 property in Nevada. (*See* Pomeroy Aff. ¶¶ 2–3, July 15, 2011, ECF No. 19-3). He admits having
 25 previously owned real property in Las Vegas, Nevada from 1996 to 2007, but attests that he

1 rented the property to his daughter and never resided there himself, and that he quitclaimed it to
2 his daughter in 2007. (*See id.* ¶ 3). He attests that he is and has been the manager of P&P, an
3 Arizona limited liability company with no offices, property, accounts, or investments in Nevada.
4 (*See id.* ¶ 5). He admits that he and P&P have had clients in Nevada, but he attests that they
5 have never solicited clients from Nevada or advertised in Nevada. (*See id.* ¶ 6). His first contact
6 with the Trust was in 2001 when the Trust's predecessor-in-interest contacted him in Arizona.
7 (*Id.* ¶ 7). Pomeroy signed the P&P Agreement in Arizona and provided all services thereunder
8 from Arizona. (*Id.* ¶¶ 9–10). He periodically communicated from Arizona to Nevada
9 telephonically and electronically, and he periodically visited the Trust in Las Vegas, Nevada to
10 advise the Trust. (*Id.* ¶ 10). Pomeroy is registered as a non-resident insurance agent pursuant to
11 Nevada Revised Statutes Chapter 683A. (*Id.* ¶ 15). Finally, Pomeroy attests that he is “in the
12 advanced stages of a rare and serious illness” and that his health problems would make a defense
13 in Nevada burdensome on himself and his business, P&P. (*See id.* ¶¶ 13–14).

14 The Court will deny the motions to dismiss the Complaint and the Cross-claim based on
15 lack of personal jurisdiction over P&P and Pomeroy in Nevada. Pomeroy admits that he is a
16 registered insurance agent in Nevada and that he has several clients in Nevada for that purpose.
17 Registering as an insurance agent under Chapter 683A is an affirmative act directed towards
18 Nevada for the purpose of securing the ability to do business in the state legally. Even if the
19 number of P&P’s clients in Nevada are few, Pomeroy seems to admit that he has had several
20 clients in Nevada over the years, including the Trust, pursuant to his registration as a non-
21 resident insurance agent, and this is sufficient to show the systematic and continuous contact
22 with the state necessary to assert general jurisdiction. Even if there were not enough for general
23 jurisdiction, there is enough for specific jurisdiction in this case. Pomeroy admits that the
24 contract was performed at least partially in Nevada via his in-person consulting in Las Vegas,
25 and that he could not have performed the contract at all had he not taken the step of registering

1 as an insurance agent in Nevada in order to avail himself of the right to do business in the state.

2 The alleged harm arose out of these contacts.

3 Finally, the exercise of jurisdiction is reasonable. Pomeroy's purposeful interjection into
4 the state was not great, but it was commensurate with the alleged harm caused in the state. The
5 burden of defending in Nevada arises out of Pomeroy's illness. Pomeroy's own presence will
6 only be necessary if a trial is required, and the Court may permit a video-taped deposition in lieu
7 of live testimony, if absolutely necessary. In any case, Las Vegas is barely thirty minutes from
8 Phoenix by air, which makes travel from one's home in Phoenix to the Las Vegas courthouse
9 easier than travel from many parts of Arizona itself to either the Phoenix or Tucson courthouses.
10 There is no conflict with the sovereignty of the State of Arizona. Nevada has a greater interest in
11 adjudicating the dispute than does Arizona, because of the alleged wrongdoing by a Nevada-
12 licensed insurance agent. Resolution of the controversy in federal court will be more efficient in
13 Nevada than in Arizona because of the current judicial emergency in the District of Arizona.
14 Plaintiff's interest in convenient and effective relief favors the Las Vegas forum. There is an
15 alternative forum in Arizona, though it is not as efficient because of the judicial emergency in
16 that district. The Court will therefore deny the motions to dismiss the Complaint and the Cross-
17 claim on the basis of personal jurisdiction.

18 **2. Personal Jurisdiction over Governmental Insurance Services in Nevada**

19 Tru Service's TPC is not verified. Tru Service alleges that Governmental Insurance
20 Services is an Arizona limited liability company doing business in Clark County, Nevada. (*See*
21 Answer, Cross-cl., & Third-party Compl. 19–21). First, Governmental Insurance Services's
22 motion is not verified, so the claims made therein are not themselves evidence. Second, the only
23 exhibit attached to the motion is the affidavit of Ms. Rachel Prystie, the person listed as the sole
24 manager and member of Governmental Insurance Services, L.L.C. on the Arizona Corporation
25 Commission's website. Prystie attests that she is the managing member of Governmental

1 Insurance Services, which she also refers to as “GIS,” making it possible that there is no separate
2 entity called GIS, but that the two are the same entity. (*See* Prystie Aff. ¶ 2, Aug. 22, 2011, ECF
3 No. 34-1). She attests that Governmental Insurance Services is an Arizona limited liability
4 company with no offices, staff, property, accounts, or investments in Nevada. (*See id.* ¶ 3). She
5 also attests that Governmental Insurance Services does no advertising in Nevada, and, more
6 importantly, does no business in Nevada, has no clients in Nevada, and has had no contacts with
7 the Trust. (*See id.* ¶¶ 3, 6).

8 Tru Services refers to the letter it received from Pomeroy on or about March 7,
9 2007—approximately a month after Governmental Insurance Services’s incorporation in
10 Arizona—indicating that Tru Services should pay all Pomeroy’s commissions to “my new
11 limited liability company, ‘Governmental Insurance Services, L.L.C.’” (*See* Letter, Mar. 7, 2007,
12 ECF No. 20-1, at 32). Tru Services also notes that the Renewal Confirmation Worksheet
13 (“RCW”) Pomeroy signed in 2007 as broker to renew the Tru Services Contract between the
14 Trust and Tru Services for calendar year 2008 indicated that his 15% brokerage commission was
15 payable to “Thomas R. Pomeroy Government Insurance Services,” that the RCW he signed in
16 2008 to renew the Tru Services Contract for calendar year 2009 indicated that his 15%
17 commission was payable simply to “Governmental Insurance Services,” and that the RCW he
18 signed in 2009 to renew the Tru Services Contract for calendar year 2010 indicated that his 15%
19 commission was payable to “Thomas R. Pomeroy.” (*See* 2008 RCW, Dec. 6, 2007, ECF No. 20-
20 1, at 20; 2009 RCW, Dec. 4, 2008, ECF No. 20-1, at 22; 2010 RCW, Dec. 30, 2009, ECF No.
21 20-1, at 24). Tru Services argues that this evidence shows Governmental Insurance Services was
22 simply an alter ego of Pomeroy, or at least that it had enough of a connection to the insurance
23 contract with the Trust to be amenable to personal jurisdiction in Nevada.

24 On its face, Governmental Insurance Services may appear to be a separate corporate
25 entity from P&P that has done no direct business in Nevada but has merely received some of

1 Pomeroy's brokerage commissions from Tru Services under the Tru Services Contract between
2 Tru Services and the Trust. But even if Governmental Insurance Services was not technically an
3 alter ego of Pomeroy, which it may have been, it seems clear that Plaintiff alleges Governmental
4 Insurance Services was created, or at least used, for the purpose of defrauding the Trust, which is
5 enough for specific jurisdiction over the fraud-related claims even if not an alter ego. To
6 establish that one party is the alter ego of another in Nevada, a plaintiff must establish by a
7 preponderance of the evidence that: (1) the corporation is influenced and governed by the person
8 asserted to be its alter ego; (2) there is a unity of interest and ownership such that one is
9 inseparable from the other; and (3) the facts are such that adherence to the fiction of separate
10 entity would, under the circumstances, sanction a fraud or promote injustice. *See Truck Ins.*
11 *Exch. v. Palmer J. Swanson, Inc.*, 189 P.3d 656, 660 (Nev. 2008). The evidence connecting
12 Pomeroy to Governmental Information Services consists of Pomeroy's own written statement
13 that Governmental Information Services was “[his] new company” and direction on the 2008 and
14 2009 renewal applications that the brokerage fees should be paid to “Thomas R. Pomeroy
15 Government Insurance Services” and “Government Insurance Services,” respectively. This is
16 enough to show at the motion to dismiss stage that Pomeroy was using Government Insurance
17 Services as an alter ego and that it would be unjust to treat it as a separate entity at all, much less
18 an entity with no connection to the alleged fraud targeting the Nevada-based Trust. Although
19 Ms. Prystie attests to be the managing member, she also attests that “[b]eginning in 2007, Tom
20 Pomeroy brokered insurance through GIS,” indicating that when Pomeroy acted as broker for the
21 2008, 2009, and 2010 renewals of the Tru Services Contract between Tru Services and the Trust,
22 he was acting not as P&P's agent, but as Governmental Insurance Service's agent, which would
23 in fact provide for specific jurisdiction over Governmental Insurance Service in Nevada from
24 2008 forward, without even invoking the alter ego doctrine. In any case, factual disputes must
25 be resolved in favor of the person asserting personal jurisdiction at the motion to dismiss stage.

1 *Mavrix Photo, Inc.*, 647 F.3d at 1223. The Court therefore denies the motion to dismiss the TPC
2 based on lack of personal jurisdiction over Governmental Information Services.

3 **B. Failure to State an Equitable Indemnity Claim Against P&P, Pomeroy, or
4 Governmental Insurance Services**

5 P&P and Pomeroy move to dismiss Tru Service's Cross-claim for failure to state an
6 equitable indemnity claim, and Governmental Information Services has moved to dismiss Tru
7 Service's TPC for failing to state the same claim. Essentially, P&P, Pomeroy, and
8 Governmental Information Services argue that a claim for equitable indemnity is unripe because
9 such a claim does not accrue in Nevada until an actual payment is made by the putative
10 indemnitee. Although a cause of action for indemnity does not accrue in Nevada until the party
11 seeking indemnity has discharged a legal obligation through settlement or judgment, *Rodriguez*
12 *v. Primadonna Co., LLC*, 216 P.3d 793, 801 (Nev. 2009) (citing *The Doctors Co. v. Vincent*, 98
13 P.3d 681, 686 (Nev. 2004)), a federal court may entertain such a claim even before it accrues so
14 long as: (1) any resulting judgment is made contingent on a putative indemnitee's payment to
15 Plaintiff, or (2) the Court stays any judgment until a putative indemnitee shows that it has paid
16 Plaintiff, because Rule 14 permits such claims where the target "is or may be liable," *see*
17 *Andrulonis v. United States*, 26 F.3d 1224, 1233–34 (2d Cir. 1994); *see also Mid-States Ins. Co.*
18 *v. American Fid. & Cas. Co.*, 234 F.2d 721, 731 (9th Cir. 1956). The Court will therefore deny
19 the motions to dismiss for failure to state a claim.

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CONCLUSION

IT IS HEREBY ORDERED that the Motions to Dismiss (ECF Nos. 19, 30, 34) are DENIED.

IT IS FURTHER ORDERED that the Motion to Substitute Party (ECF No. 55) is GRANTED.

IT IS SO ORDERED.

Dated this 7th day of December, 2011.

~~ROBERT C. JONES
United States District Judge~~